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majority of courts holds that, in such a case, the subsequent allottees can, upon discovering the nature of the transaction procure a suit to be brought by the corporation to recover the secret profit. The ground for this rule is, that the fiduciary capacity of the promoter is co-extensive with the scheme of promotion,¹⁶ that at the time of the sale he acts under a duty to contemplated original shareholders,¹⁷ and therefore that they can recover the secret profit from him. This is the ground taken by the Court in the principal case.

There is, however, some support for a contrary rule, and the fact that the United States Supreme Court is among the tribunals promulgating it necessitates its respectful examination. The ground on which it rests is that a corporation is an entity, which is bound by its original consent to the purchase, and that its position is not altered by the issue of additional stock to original subscribers.¹⁸ It is submitted that this proposition is completely answered by the doctrine of the principal case which is as follows: The reason that a corporation cannot object to a sale to it by the promoter where either the promoter has taken all the stock, or all the original subscribers have consented is not that no wrong has been committed, but "that the corporation is estopped by reason of the fact that all the persons with financial concern in the matter have assented with knowledge, and thus the lips of everybody are sealed. Whatever wrong has been done has been condoned. The maxim '*volenti non fit injuria*' is invoked." But "the wrong is done to the corporation as an independent entity and thus the rights of those who are *or may become* stockholders are affected." "Subsequent subscriptions to the original stock as a part of the scheme of promotion, do not change the identity of the corporation, but remove an impediment for the enforcement of a remedy for a wrong previously done the corporation."

E. S. B.

ADMIRALTY—PRIVITY OR KNOWLEDGE OF OWNER UNDER THE LIMITED LIABILITY ACT.

Just what constitutes privity or knowledge on the part of the owner of a vessel so as to bar him from taking advantage

¹⁶ *Pietsch v. Milbraith*, 123 Wis. 647.

¹⁷ *Land Co. v. Lewis*, 101 Me. 78; *Mining Co. v. Spooner*, 74 Wis. 307; *Groel v. Electric Co.*, 70 N. J. Eq. 616; *Hayward v. Leeson*, 176 Mass. 310.

¹⁸ *Old Dominion Co. v. Lewisohn*, 210 U. S. 206.

of the act limiting his liability to the value of the vessel has been much discussed. The question arose recently in the case of *Sanbern v. Wright & Cobb Lighterage Co.*,¹ where an action was brought for damages for the loss of a cargo caused by the capsizing of a barge, which the evidence showed was unseaworthy. The defendant corporation sought to limit its liability to the value of the barge. The general manager of the corporation was responsible for the condition of the boat, and it appeared that he had made a perfunctory examination before the voyage. He testified that they repaired whatever appeared necessary; if the boat leaked, she was repaired; if not, nothing was done. The Court held that such a method—"leaving it to the progress of decay to develop signs of weakness"—was not a proper exercise of the owner's duty, and the defendant was denied the benefit of the act.

The Limited Liability Act was passed to encourage ship-building and to induce capitalists to invest money in this branch of industry. Therefore, it is evident that the privity or knowledge required by the act means the personal privity or knowledge of the owners, and not merely the privity or knowledge of their agents;² because, if construed otherwise, the act would be of no practical effect.

Where the owner is a corporation, the rule is that knowledge of some defect by an agent or employee is not the knowledge of the corporation so as to defeat its right to the exemption; but the knowledge of the president or other high officer of the corporation would be. In *Butler v. Boston S. S. Co.*,³ an accident occurred because the second mate, who was not a licensed pilot, had charge of the ship. The Court held that the captain was in command, and it was his duty to see that a qualified pilot was employed, and his negligence did not deprive the corporation of its right to limit its liability. In another case⁴ the privity or knowledge of a wrecking master employed by the agent of an underwriter was held not to be the privity or knowledge of the underwriter. (For the purpose of receiving the benefit of the act an underwriter is considered an owner.)

It is the duty of the owner to provide a seaworthy vessel, and if loss occurs through his neglect in this particular, he is liable, and cannot claim the statutory limitation.⁵ Thus the

¹ 171 Fed. 449.

² *Lord v. Goodall, etc., S. S. Co.*, 4 Sawyer 292.

³ 130 U. S. 527.

⁴ *Craig v. Ins. Co.*, 141 U. S. 638.

⁵ *Lord v. Goodall, etc., S. S. Co.*, 4 Sawyer 292.

right to the benefit of the act was refused where the owner failed to inspect the vessel to ascertain her condition before the voyage, and damage occurred subsequently because of her unseaworthiness.⁶

But the owner may satisfy this duty by employing a competent agent to inspect the vessel; and the subsequent neglect of such agent is not with the privity and knowledge of the owner, unless the defects overlooked were of such character as to be detected by the inspection of an unskilled person.⁷

In *Quinlan v. Pew*,⁸ the owners of a vessel employed a master to put the vessel into condition. There was a defect in the rigging, known to the master before the vessel sailed, but unknown to the owners. As a result of this defect one of the crew was injured. It was held that the owners were not privy to the defect. Again where a vessel was rendered unseaworthy by the method in which the master and crew loaded her, the corporation which owned her was allowed the exemption of the act.⁹

Under the English statute, in the case of *The Warkworth*,¹⁰ a collision was caused by a defect in the steering gear of the vessel. The owners had employed a man to inspect the vessel, and it was through his negligence that the defect was not discovered. It was held that the owners could limit their liability.

If, however, the owner makes the examination of the vessel himself, he is liable if his failure to discover a defect is due to his negligent inspection. In *The Republic*,¹¹ a barge belonging to a corporation was inspected by the president before it was used for an excursion. Its unsafe condition was apparent, but nothing was done. An accident resulted, and the corporation was not allowed the benefit of the act. And where the manager and superintendent of a corporation hastily inspected one of the corporation's barges, and failed to discover several broken timbers, the corporation was not allowed to limit its liability when the barge subsequently sank.¹² The principal case also comes directly under this rule.

To summarize: The privity or knowledge must be the *per-*

⁶ *In re Meyers Excursion Co.*, 57 Fed. 240.

⁷ *The Annie Faxon*, 75 Fed. 312.

⁸ 56 Fed. 111.

⁹ *The Colina*, 82 Fed. 665.

¹⁰ 9 Prob. Div. 20.

¹¹ 61 Fed. 109.

¹² *Oregon Lumber Co. v. S. S. Co.*, 162 Fed. 912.

sonal privity or knowledge of the owner himself, and not merely of his agent. Where the defect or negligence bears upon the seaworthiness of the vessel, the owner must either make a diligent inspection himself, or appoint a competent person to make such inspection for him. Where a corporation is owner, the privity or knowledge of the corporation is measured by the privity or knowledge of its responsible officers.

R. C. H.

THE DOCTRINE OF THE TURNTABLE CASES IN ENGLAND.

The doctrine of the so-called "Turntable Cases" has long been a subject of heated discussion in the United States, but the question did not arise in the English courts till a few months ago, when, in *Cooke v. Midland Great Western Ry. of Ireland*,¹ the House of Lords, relying on *Lynch v. Nurdin*,² adopted the doctrine as laid down in the more moderate American cases. In this case the railway company kept a turntable unlocked on their land close to the public road. Employes of the company knew that children were in the habit of playing on the turntable and the adjoining premises, to which there was easy access through a gap in the hedge. In holding that there was evidence of actionable negligence the injured child was considered as a *licensee* of the defendant company. Lord McNaghten in his opinion says: "Persons may not think it worth their while to take ordinary care of their own property, and may not be compellable to do so; but it does not seem unreasonable to hold that, if they allow their property to be open to all comers, infants as well as children of a maturer age, and place upon it a machine attractive to children and dangerous as a plaything,^a they may be responsible in damages to those who resort to it with their *tacit permission*, and who are unable, in consequence of their tender age, to take care of themselves." In holding the injured child a licensee of the defendant company, the House of Lords bring their decision within the general principles as to the duties owed by

¹ L. R., 1909, App. Cas. 229.

² 6 Ad. & E. 30.

^a In a recent Scotch case (*Holland v. Lanarkshire, etc., Committee*, 1909 S. C. 1142) recovery was denied to a child, injured by a fall into a quarry under similar circumstances, on the ground that a quarry differed from a "dangerous machine of an alluring character," such as a turntable.